



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

APR 20 2017

Mr. Hiram J. Torres-Montalvo
Puerto Rico Limpio
PMB 136 LaCumbre
273 Sierra Morena
San Juan, PR 00926-5542

Dear Mr. Torres:

This is in response to your April 3, 2017, letter to the U.S. Environmental Protection Agency Administrator Scott Pruitt, regarding municipal solid waste disposal in the Commonwealth of Puerto Rico. You raised similar issues in your September 1, 2016, letter to former Administrator Gina McCarthy, to which EPA responded on November 22, 2016 (copy enclosed).

Your most recent letter raises concerns regarding what you characterize as “criminal neglect” on the part of both EPA and the Puerto Rico government with respect to the Toa Baja Municipal Solid Waste Landfill, and asserts that EPA has “looked the other way” from this landfill and from what you term a “decade-long crisis” regarding the continued operation of non-compliant solid waste landfills in Puerto Rico. Your letter further states that “no enforcement action” was taken over the past eight years and urges EPA to use existing legal authorities and budgets to immediately close all of the non-compliant landfills operating in the Commonwealth.

Let me assure you again that EPA has not been looking the other way. Although solid waste is primarily a matter of state or, in this case, territorial responsibility, EPA has actively used its civil and administrative authorities to address this very challenging and complicated issue in Puerto Rico. EPA has taken one or more actions against 13 of the 29 operating solid waste landfills in Puerto Rico. Since 2007, EPA has issued 15 Administrative Orders under the imminent and substantial endangerment provision of the Resource Conservation and Recovery Act to require closure of landfills. We have also entered into a Clean Air Act Judicial Consent Decree, to require improved operations and scheduled closure of another landfill. Just this month, we issued an Administrative Order to the Toa Alta Municipal Solid Waste Landfill and, with the Department of Justice, we lodged a proposed Civil Judicial Consent Decree regarding the solid waste landfill owned and operated by the Municipality of Santa Isabel.

The Toa Baja Landfill is subject to a 2012 EPA Amended Order on Consent, under which the landfill is scheduled to permanently cease receiving waste by January 1, 2018, and to permanently close by January 1, 2019. The landfill no longer operates as an open dump, as waste disposal in the old, unlined cell ceased in 2015. The EPA visited the landfill in November 2016, and we did observe waste disposal

in the new, lined landfill cell, but we did not observe any recent illegal expansion of the landfill (*i.e.*, beyond that already addressed in the Order on Consent). We are, however, concerned with the current situation you describe at the landfill, involving illegal expansion and dumping of trash on a hillside, and request that you provide us with any information you may have which documents these conditions.

We share your concern in this matter and hope that this information will give you a better understanding of EPA's efforts. Please contact Mr. Leonard Grossman, Senior Enforcement Team Leader, RCRA Compliance Branch, EPA Region 2 at (212) 637-4039 or grossman.lenny@epa.gov to provide any supporting documentation regarding the Toa Baja Landfill or if you have any additional questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Catherine R. McCabe". The signature is fluid and cursive, with the first name "Catherine" written in a larger, more prominent script than the last name "McCabe".

Catherine R. McCabe
Acting Regional Administrator

Enclosure



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NOV 22 2016

Mr. Hiram J. Torres-Montalvo
Puerto Rico Limpio
PMB 136 LaCumbre
273 Sierra Morena
San Juan, PR 00926-5542

Dear Mr. Torres:

This letter is in response to your September 1, 2016, letter to U.S. Environmental Protection Agency (EPA) Administrator Gina McCarthy regarding municipal solid waste disposal in the Commonwealth of Puerto Rico. I can assure you that the EPA shares your concern that municipal solid waste landfills in Puerto Rico comply with protective operating and closure requirements.

The EPA continues to work on problems posed by municipal solid waste landfills in Puerto Rico. The EPA has issued administrative orders and entered into a consent decree that together address twelve of the landfills, and we are overseeing the implementation of these requirements. The most recent of the orders were issued in September 2016 and dealt with the landfills in the Municipalities of Arroyo and Cayey. Copies of these orders and the consent decree are available at: <https://www.epa.gov/pr/puerto-rico-landfill-consent-orders-and-consent-decrees>.

In general, these orders and consent decree require operational improvements at the landfills, the permanent cessation by a date certain of the receipt of waste at the landfills, preparation of proper landfill closure plans, and full implementation of those closure plans according to schedules approved by the EPA. The time period allowed for closure takes into account the financial constraints of the municipalities. Four of the twelve landfills have already either permanently closed, achieved interim closure, or permanently ceased waste acceptance, and a fifth landfill is now accepting limited amounts of waste. The EPA continues to investigate the landfills on the island, and where necessary, will take legal action. Thus, the agency has acted and will continue to act to protect public health and the environment from adverse impacts from the municipal solid waste landfills in Puerto Rico. A fact sheet summarizing the EPA's work to address Puerto Rico landfills is enclosed.

As background, in the 1980's, 69 landfills operated in Puerto Rico. By the end of the 1990's, 37 of those landfills were closed. Two additional landfills closed in the last 10 years, while two recently ceased receiving waste and are undergoing closure. One new, fully lined landfill opened in 2016. Of the remaining 29 operating landfills, 19 of these continued to place waste in unlined waste cells.

Several of the administrative orders the EPA has issued in recent years also provide that certain landfills may build new, compliant waste disposal cells to ensure that there is adequate space for future municipal solid waste disposal. There are now 10 landfills operating fully-lined disposal cells in the Commonwealth, providing protective, affordable, solid waste disposal capacity to many of the financially burdened municipalities. Further, all of the EPA's recent orders require that the landfills

develop and implement, if feasible, photovoltaic and gas-to-energy systems that will help provide affordable electricity to surrounding communities. While photovoltaic systems have been proposed, they have yet to be funded; however, gas-to-energy systems are now operational at two of the landfills covered by the EPA orders. Further, all but one of the EPA's orders requires the municipalities to implement comprehensive recycling and composting programs.

The EPA has also worked to get mosquito control plans in place for all Puerto Rico landfills. Beginning in April 2016, the EPA sent letters to the landfills under an agency order, requiring them to submit and immediately implement mosquito control plans. The EPA expects to include such a requirement in any future orders as well, relating to Puerto Rico landfills. These plans are especially important to help prevent Zika transmission on the island. To date, 15 landfills have put such plans in place. More recently, letters requesting that plans be developed, submitted to the Puerto Rico Environmental Quality Board (EQB), and implemented, have been sent to all the operating landfills not under an agency order. The EPA is also working to help EQB and the Puerto Rico Solid Waste Management Authority address scrap tire piles in the Commonwealth, which are not only a fire hazard, but also pose a risk of harboring mosquitoes that may transmit the Zika virus and other diseases.

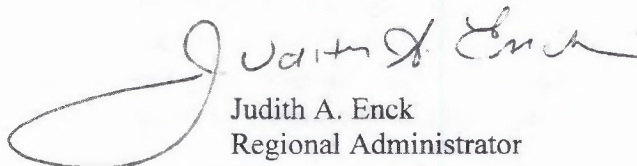
With respect to your suggestion that the EPA withdraw its approval of EQB's solid waste permitting program, two important facts should be kept in mind: 1) even if the agency did withdraw approval of the program, that would not result in the EPA having the authority to issue municipal solid waste landfill permits in Puerto Rico and to run Puerto Rico's solid waste program. The Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901, *et seq.*, does not give the agency that authority. Rather, we would need EQB to continue to run a permit program for solid waste management facilities. This is the framework contemplated under RCRA. 2) Irrespective of whether solid waste program approval is withdrawn, the EPA retains its authority under Section 7003 of RCRA to require the abatement of imminent and substantial endangerments, as we have done at many of the landfills in Puerto Rico.

In summary, the EPA Region 2 has prioritized numerous actions to reduce threats to health and the environment posed by Puerto Rico landfills, improve their operations and require their proper closure, and we continue to do so.

If you have questions or would like to discuss this matter further, please contact Mr. Leonard Grossman, Section Chief, RCRA Compliance Branch, EPA Region 2 at (212) 637-4039 or grossman.lenny@epa.gov.

Thank you.

Sincerely,



Judith A. Enck
Regional Administrator



EPA's Work to Address Puerto Rico Landfills

September 2016

Improving solid waste management and addressing landfill problems in Puerto Rico is important. There are approximately 29 operating landfills in Puerto Rico, the majority of which are beyond capacity. EPA began its direct involvement to address these landfills in 2002, and continues to work closely with the Puerto Rico Environmental Quality Board (EQB).

In Puerto Rico, EPA has focused on four things: 1) closure of open dumps (*i.e.*, long-term, non-complying landfills) to protect human health and the environment; 2) implementing recycling; 3) greenhouse gas reductions via landfill gas collection, control, and energy recovery; and, 4) improving operations in existing landfills.

To date, the EPA has legal agreements to close 12 landfills, and the EPA is continuing to assess landfills and develop legal agreements where appropriate.

Puerto Rico Landfill Consent Orders and Consent Decree - Closure Status

Landfill	Closure Status	Recycling & Composting Program Required	New Cell Construction
Aguadilla	Closed April 2010	No	No
Arecibo (Consent Decree)	After reaching final capacity (circa 2020)	Yes	No
Arroyo	Permanent waste receipt cessation required June 2019	Yes	No
Cayey	Permanent waste receipt cessation required January 2018	Yes	Under consideration
Florida	Overdue - permanent waste receipt cessation required June 2016	Yes	No
Isabela	June 2020 (only limited waste now being received)	Yes	Planned
Juncos	Permanent waste receipt cessation required December 2014 – Extended	Yes	Under construction
Lajas	December 2017	Yes	Planned
Moca	After reaching final capacity (circa 2019)	Yes	Planned
Santa Isabel	Interim closure completed September 2014	Yes	No
Toa Baja	Permanent waste receipt cessation September 2014 (achieved September 2015) and closure thereafter per closure plan schedule (pending)	Yes	Operational
Vega Baja	Permanent waste receipt cessation July 2013 (achieved July 2015) and closure thereafter per closure plan schedule (pending)	Yes	Operational

The EQB received federal approval from EPA in 1994, indicating that its solid waste compliance and enforcement program adequately reflected federal landfill criteria. Accordingly, EQB has primary responsibility for regulating solid waste landfills in the Commonwealth, and federal landfill criteria governing solid waste are not directly enforceable by EPA in Puerto Rico. Only EQB has permitting and solid waste enforcement authority over the landfills. EPA utilizes its enforcement authority under the Resource Conservation and Recovery Act (RCRA), as well as other federal statutes, to require that substantive actions be taken to address serious environmental and health risks. EPA used its RCRA Section 7003 Imminent and Substantial Endangerment Authority in the Puerto Rico open dump Consent Orders.

EPA has also worked extensively with EQB on the revision of its solid waste management regulations, in order to restore consistency with the minimum federal requirements. For example, EQB recently adopted a resolution with management standards for coal combustion residuals and approved a new biomedical waste regulation. In addition, EQB is in the process of developing amendments to its non-hazardous solid waste management regulations and an expanded regulatory composting program.

It is not practical to immediately close most landfills in Puerto Rico. The EPA and EQB approach has been to first close those that pose the greatest threat to the environment and to people's health. Regarding EPA's enforcement agreements, EPA has ordered landfills that have reached capacity to stop receiving waste and properly close. Other landfills that have not yet reached capacity are allowed to continue to accept waste, as long as they are in compliance with environmental regulations. EPA's Orders provide that certain landfills may build new, compliant waste disposal cells to ensure that there is adequate space for municipal solid waste to be disposed of on the island. There are now 10 landfills operating compliant disposal cells. Under all of EPA's Consent Orders and a Consent Decree, the open dumps are required to stop receiving waste and properly close as quickly as technically and economically feasible.

The EPA's Consent Orders and the Consent Decree go above and beyond requiring proper closure. Comprehensive recycling and composting provisions are included in 10 of the 11 EPA Consent Orders and in the Consent Decree. Other required environmental and engineering controls include groundwater monitoring, leachate (seepage) and stormwater (runoff) controls, and landfill gas monitoring and control.

The EPA has taken action to encourage and cultivate higher recycling rates in municipalities across the Commonwealth. In 2010, EPA helped establish the Puerto Rico Recycling Partnership (PRRP) to promote reuse, recycling, and clean composting throughout the Commonwealth. EPA has also worked with businesses and not for profit institutions to reduce the amount of waste generated and increase recycling through other EPA programs such as WasteWise and the Food Recovery Challenge, and has worked with EQB and the Puerto Rico Solid Waste Management Authority (SWMA) on materials management and planning.

The EPA has worked to get mosquito control plans in place for all Puerto Rico landfills. EPA sent letters to the landfills under EPA order, beginning in April 2016, requiring them to submit and immediately implement mosquito control plans, and made the plans a requirement for future orders. This is especially important to help prevent Zika transmission on the island. To date, seven landfills have already put such plans in place. More recently, letters requesting that plans be developed and submitted to EQB have been sent to all the operating landfills not under EPA order.

The budget crisis in Puerto Rico makes it more difficult for municipalities to properly address landfills. The central government of Puerto Rico faces a budget crisis which extends to the municipalities, which have always had limited funds to implement the environmental and engineering controls required to improve, and ultimately close, the landfills. This problem is further compounded by EQB having previously exempted municipalities from the requirement to set aside funds for closure, and the dwindling resources made available to EQB by the central government to carry out their solid waste compliance and enforcement programs.

The EPA will continue to work to address issues at landfills in Puerto Rico. EPA continues to actively assess the status of the remaining open dumps, and intends to issue further orders on a priority basis. Moreover, EPA will continue to work with EQB to both coordinate on solid waste enforcement and to oversee implementation and rebuilding of their approved solid waste program. EPA will continue to: 1) encourage the Puerto Rico government to provide ongoing funding to help the municipalities perform environmentally safe landfill operations and closure; 2) encourage the Puerto Rico government to work with the Puerto Rico legislature to develop programs for closure funding to municipalities; 3) encourage EQB and SWMA to implement a new island-wide revised solid waste program; and, 4) encourage SWMA to work with municipalities to implement recycling and composting programs.

For More Information

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